

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2936 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

BABUBHAI RANCHHODBHAI CHAUHAN

Versus

STATE OF GUJART

-----  
Appearance:

MR SUNIL C PATEL for Petitioner  
MR.BD.DESAI,LD. PUBLIC PROSECUTOR for Respondent No. 1  
MR YV SHAH for Respondent No. 2

-----  
CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 19/03/96

ORAL JUDGEMENT

This is a Criminal Revision Application on behalf  
of the original accused. On 29th August 1989 about 8.30  
a.m. the petitioner was found to be going on his bicycle  
within the town of Bilimora, carrying one container of  
milk with him. Respondent No.2 the Food Inspector

working under Bilimora Municipality had taken sample from the accused. It was a sample of buffalo milk. The sample was got analyzed and it was found to have been adulterated. According to the Report, the sample did not conform with the requisite ingredient requirement. Learned JMFC, Gandevi in Criminal Case No. 728 of 1990 was pleased to come to the conclusion that the offence punishable under Section 7(1) and Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954, were duly established. Petitioner accused came to be convicted for the said offences and he has been sentenced to the R.I. for one year and to a fine of Rs.1000-00, in default to suffer a further R.I. of three months. The Appeal presented by the petitioner accused came to be dismissed by learned Addl. Sessions Judge, Valsad at Navsari vide orders dated November 04, 1995. The said orders are in challenge in the present Revision before me.

Mr. Sunil C. Patel, learned counsel appearing on behalf of the petitioner accused raises a solitary contention before me. His contention appears to have been based upon a decision rendered by a learned Single Judge of this Court in Criminal Appeal No. 200 of 1987, decided on February 24, 1994, which places relies upon the Division Bench decision of the High Court of Bombay. Presenting the facts learned counsel urges that the sample was collected on August 29, 1989 and came to be forward to the Public Analyst on the very same day. The sample came to be analyzed by the Public Analyst on September 01, 1989. Anyhow the Report to be prepared by the Public Analyst came to be signed by him only on September 08, 1989. This is evident from the Report of the Public Analyst at exhibit-49.

In the background of these facts, learned counsel urges that when the analysis was made on September 01, 1989 and when the Report came to be singed only on September 08, 1989, the Report would lose the evidentiary value. In support of this contention learned counsel places reliance upon the decision rendered by this Court in Criminal Appeal No. 200 of 1987 decided on February 24, 1994 (Coram: N.N.Mathur, J.). Placing reliance upon a decision rendered by the Division Bench of the High Court of Bombay, this Court has taken the view that if the Report of the Public Analyst was not made at the sametime when the sample was analyzed but was made later on, then the basis of the notes of the analysis made at the time of analyze will cease to have the evidentiary value. In the case before the Bombay High Court the very same was the fact situation, in as much as the Report has not been made and or signed on the date on which the analysis was

done. The same principle would apply and in my view the Report in the instant petition also lose its evidentiary value.

Before reaching the final conclusion, two contentions coming from learned Government counsel Mr.B.D.Desai and learned counsel Mr. Y.V.Shah for Bilimora Municipality shall have to be taken into consideration. The first contention coming from learned counsel Mr.Desai is that, the decision rendered by the Bombay High Court has no binding effect on me and that, I am free to take a different view. Learned counsel appears to be right so far as the first half of his submission is concerned. The principle enunciated by the Bombay High Court has been accepted by this Court in Criminal Appeal No. 200 of 1987. I do not propose to take a different view than what has been taken by learned Single Judge in the said Appeal. The contention coming from learned counsel for Bilimora Municipality, Mr. Y.V.Shah is that, this being a Criminal Revision my jurisdiction is a circumscribed one. Learned counsel appears to be right. But even in the exercise of a jurisdiction which appears to be circumscribed or a limited one, it shall have to be appreciated that a legal contention is being raised by learned counsel for the petitioner which goes to the very root of the matter. The settled legal position speaks otherwise and in favour of the petitioner accused. If taking into consideration this factual aspect and the contention based upon the same, it can not be said that I am overstepping my jurisdiction in Criminal Revision, which is a circumscribed or a limited one. These two contentions therefore do not require to be countenanced.

The conclusion therefore is that the present Criminal Revision Application succeeds and the same requires to be allowed. It is therefore accordingly allowed. The judgments of the Courts below regarding the conviction & sentence are hereby set aside and the petitioner accused is hereby acquitted of the offences for which he stood charged and convicted. Petitioner accused is behind the bars and therefore he shall be set at liberty forthwith, if not required in any other criminal case or proceedings. Fine in sum of Rs.1000-00 if paid shall be refunded to the petitioner accused. Rule is made absolute accordingly.

-----

